

ATTACHMENT B-13

COASTAL COMMISSION MODIFICATIONS TO ORDINANCE 3189 WHICH HAVE NOT BEEN CARRIED THROUGH TO THE CURRENT PROPOSAL

BACKGROUND

On January 29, 2013, the Board of Supervisors adopted a resolution rejecting Coastal Commission modifications that affect the existing Coastal Development Permit (CDP) exemption and grading permit exemption for agricultural cultivation activities. The Coastal Commission modification suggests that all agricultural grading requires CDP authorization.

As a result of rejecting these modifications, the proposed ordinance will differ from the ordinance adopted by your Board in April 2010 in the following ways:

- The procedures developed and adopted for agricultural grading in the inland portion of the County will not be carried over to the Coastal Zone. The existing Coastal Zone exemption for agricultural cultivation activities is proposed to be carried forward under this ordinance. .
- The Alternative Review Program, which allows a local Resource Conservation District to review, approve, and inspect certain agricultural grading projects will not be available in the Coastal Zone.

Of the roughly 37 modifications the Coastal Commission made to Ordinance 3189, the vast majority have been incorporated into the current ordinance amendment proposal. The following modifications made by the Coastal Commission, however, have not been carried forward in this proposal.

SUMMARY OF REJECTED MODIFICATIONS

1) Section 23.05.024 - Scope

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The Grading Ordinance sets forth standards, including the incorporation of Best Management Practices (BMPs), to control all grading, excavations, and earthwork. The Grading Ordinance also provides for the approval of plans and inspection of grading construction and BMPs. In the event of any conflict between the provisions of the Grading Ordinance and state law, the more restrictive requirement shall apply. Agricultural grading, whether exempt or required to be permitted by the Grading Ordinance requires CDP authorization, may be exempted from NPDES Phase II requirements, pursuant to Section 23.05.044.b(3).

No work subject to the provisions of the Grading Ordinance shall be commenced, maintained or completed in violation of these regulations.

2) Section 23.05.028 – Grading Permit Required**23.05.028 - Grading Permit Required**

Where not otherwise exempt by Section 23.05.032 (Exemptions from Grading Permits) or authorized through the alternative review process pursuant to Section 23.05.034 (Alternative Review), a grading permit shall be obtained where grading is to occur meeting the definition set forth in Section 23.05.030 (Grading). A separate permit shall be required for each site and shall cover both excavations and fills. Contiguous sites being graded as one integrated project may be considered one site, as deemed appropriate by the Director, in order to enforce the requirements of the Grading Ordinance.

Even those activities that do not constitute grading as defined in the Grading Ordinance, or are exempt from grading permits, may be subject to other applicable sections in this ordinance. This includes requirements, such as preparation and approval of an erosion and sedimentation control plan, drainage plan, and/or stormwater pollution prevention plan.

In addition to the requirements of the Grading Ordinance, all grading activities require CDP authorization, except those that are exempt from CDP requirements pursuant to Section 23.03.040 (d). Where a grading permit application proposes a project that is not otherwise subject to land use permit requirements of Chapter 23.03 or 23.08 or other applicable sections of this Title, grading permit approval certifies that the proposed project will satisfy applicable provisions of this Title and thereby constitutes approval of a Coastal Development Permit. Where a grading permit or application for coverage under the Alternative Review Program is appealable to the Coastal Commission pursuant to Section 23.01.043, Minor Use Permit approval is also required as set forth in Section 23.02.033.

Authorization of an Alternative Review Form to permit Alternative Review Grading, pursuant to Section 23.05.034, shall occur only when the Director finds that the project is in compliance with all applicable sections of this Title, the Local Coastal Program, and the California Coastal Act. Such authorization shall constitute a CDP plot plan pursuant to Section 23.02.030(f) and shall be appealable to the Coastal Commission, where applicable.

Grading activities are not exempt from grading permit requirements under Subsections 23.05.032.b and 23.05.032.c in the coastal zone, except under the following circumstances: (i) A prior coastal development permit has been issued for the proposed activity; or (ii) The activity is not considered development under Section 23.03.040.a. (iii) Activities which are described in Subsections (i) and (ii) may be authorized through the Alternative Review Process (Section 23.05.034), where authorization for alternative review constitutes issuance of a coastal development permit.

In granting any permit in compliance with the Grading Ordinance, the Director and, where provided, the Public Works Director, may impose conditions as necessary. These conditions may include requiring a licensed contractor to perform the work or a licensed professional (e.g. civil engineer, geotechnical engineer, etc.) to prepare plans or technical reports in order to prevent creation of a nuisance or a hazard to public health, public safety, or public or private property, or to assure conformity to the County General Plan.

3) Section 23.05.028.b(12) – Exemption for ongoing crop production.

The Coastal Commission recommended the following modifications to the new exemption labeled “ongoing agricultural production”

- (11) **Ongoing crop production and grazing.** Grading for the ongoing production of food and fiber, the growing of plants, and the management of rangeland shall be exempt when all of the following are true:
- (i) For grading activities related to crop production, the proposed grading is limited to preparing a field for a crops, repair or restoration of existing fields, removal of vegetation, and associated drainage improvements on land that has been previously cultivated within the previous ~~ten-five~~ years ~~or covered under a conservation plan prepared as part of the Conservation Reserve Program~~. Previously cultivated land shall include any land where the following practices have occurred: disking, harrowing, raking or chiseling, planting, plowing, seeding, or other tilling. Activities covered under this exemption are not limited to these cultivation practices.
 - (ii) For grading activities related to range management for livestock production, the grading is limited to the following activities: vegetation management, such as reseeding, removal, or vegetation modification; or livestock watering systems and associated drainage improvements other than ponds or reservoirs. To qualify for this exemption, these activities shall take place only on land where grazing has occurred within the previous ~~ten-five~~ years ~~or on lands covered under a conservation plan prepared as part of the Conservation Reserve Program~~.
 - (iii) All site work shall be balanced. No importation or exportation of fill material from/to off-site parcels shall occur. These fill materials include topsoil and sand. The importation or exportation of soil fertility amendments to enhance crop production or rangeland fertility is permissible under this exemption. Soil fertility amendments include materials described in the California Food and Agricultural Code Sections 14511 et seq. (excluding Section 14552(e)). Any land application of treated sewage sludge (i.e. biosolids) as a soil fertility amendment shall be subject to local ordinances. Importation of sand and gravel may occur only when used for drainage improvements.
 - (iv) All site work complies with the standards identified in Subsection c(1).
 - (v) The grading does not involve construction of or modification to dams, ponds, reservoirs, or roads; however farm roads located entirely within or on the edge of existing fields may be modified or re-oriented under this exemption.

In lieu of this, we are proposing to return to the existing agricultural exemption language contained in current Section 23.05.026.d, which follows:

- d. Agricultural cultivation activities including preparation of land for cultivation, other than grading for roadwork or pads for structures.

4) Section 23.05.032.c – Agricultural Grading
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The Coastal Commission recommended modifications to this subsection, which dealt with “Agricultural Grading.” We are proposing to eliminate this subsection entirely and instead to rely on the existing agricultural exemption language referenced above.

- c. **Agricultural Grading.** This Subsection applies to all grading that does not satisfy the description for exempt grading in Subsection b. In order for agricultural grading to be exempt from a grading permit, as set forth in this Subsection, an Agriculture Grading Form shall be completed and submitted to the County prior to commencement of any grading activities, for verification that exemption criteria are met. An applicant’s signature on the form indicates participation in an educational, waiver, or certification program approved by the Planning Director in consultation with the Resource Conservation District (RCD) and Natural Resources Conservation Service (NRCS), and acknowledgment of required compliance with the standards in Subsections a and c. Exempt agricultural grading must meet the minimum requirements to determine exempt status in 23.05.032.a.

(1) Agricultural Grading Standards.

- (i) All excavated material shall be placed on the same or contiguous parcels, unless otherwise specified in Subsection c(2).
- (ii) Agricultural grading shall employ sound agricultural management measures and practices of the USDA Natural Resources Conservation Service (NRCS) and the UC Cooperative Extension. These practices shall not adversely affect slope stability, or groundwater recharge. Additionally these practices shall prevent off-site drainage and erosion and sedimentation impacts. All agricultural grading, whether requiring a permit or exempt, shall be consistent with the standards and practices contained in the NRCS Field Office Technical Guide (FOTG).
- (iii) Effective erosion and sedimentation control measures shall be used on all cut and fill slopes in compliance with Section 23.05.048.c to protect, restore and revegetate with native plants within 45 days after the completion of work or before October 15 and shall be continually maintained for the life of the project. This 45 day period may be extended where work is completed earlier in the year and an extension is necessary for rainfall to assist onsite revegetation. All erosion and sedimentation control measures shall be designed to prevent sediment from entering any blue-line stream, river, pond, lake, wetland, bay, or the ocean.

- (iv) Any proposed exempt activities within a recorded or unrecorded archaeological site shall comply with the requirements of Section 23.05.140.

(2) **Allowed agricultural grading.**

- (i) **New crop production and grazing.** Grading to prepare new land for crop production or grazing purposes , including drainage improvements and vegetation removal, on slopes with a natural gradient less than thirty percent and in areas that are more than 100 feet from any watercourse or ESHA. Importation and exportation of commercial soil amendments as specified in Subsection b(4112)(iii) is permissible under this exemption.
- (ii) **Small reservoir.** A reservoir constructed to regulate or store a supply of water for frost protection, seasonal irrigation, or livestock purposes. Ponds, reservoirs, and dams are subject to the standards in Section 23.05.048.f. To qualify for exemption as a small reservoir the following criteria must be met:
 - (a) The reservoir shall be designed to contain no more than one acre-foot of water.
 - (b) All water storage shall be located entirely below natural grade.
 - (c) The reservoir shall not be located on a stream, lake, or marsh, as identified on any U.S. Geological Survey map.

Storage reservoirs that do not meet the criteria under this standard may qualify for alternative review pursuant to Section 23.05.034.b(4).

- (iii) **Upland restoration measures.** Projects which are undertaken for soil, water quality, habitat, or wildlife restoration, conservation, or enhancement occurring outside of the channel of a stream.
- (iv) **Imbalanced grading.** Grading projects intended to accommodate one or more of the projects identified in Subsections b and c, and involving importation or exportation of no more than 2,000 cubic yards on a site per year.

5) Section 23.05.034 – Alternative Review
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The Coastal Commission recommended several modifications to the section, which dealt with the Alternative Review Program for certain agricultural grading projects. We are proposing to eliminate this section entirely and instead to rely on the existing agricultural exemption language referenced above.

23.05.034 - Alternative Review Program

Note: While the activities under this section are exempted from a grading permit for the purposes of this County's ordinance, they are not exempted from coastal development permit requirements. In addition, the owner and/or applicant should understand that permits may be required by other regulatory agencies, including, but not limited to, the California Department of Fish and Game, Regional Water Quality Control Board, Army Corps of Engineers, U.S. Fish and Wildlife Service, or the California Department of Forestry (Cal Fire). Additionally, grading projects involving work within a state or County right-of-way may require encroachment permit approval.

The applicant may elect to use the Alternative Review Program for those projects in compliance with Subsection b. This process allows an applicant to obtain technical assistance, inspection, and sign-off by either the Natural Resources Conservation Service (NRCS) or the Resource Conservation District (RCD).

An Alternative Review Form shall be completed and submitted to the County to verify that the project qualifies for the Alternative Review Process prior to commencement of any grading activities.

Authorization of an Alternative Review Form shall occur only when the Director finds that the project is in compliance with all applicable sections of this Title, the Local Coastal Program and the California Coastal Act. Such authorization shall constitute a plot plan pursuant to Section 23.02.030(f) and shall be appealable to the Coastal Commission, where applicable.

a. Alternative review program standards.

- (1) Grading activities allowed under this section must conform to the minimum requirements to determine exempt status identified in Section 23.05.032, agricultural exempt standards in Subsections c(1)(ii), c(1)(iii), and c(1)(iv) of Section 23.05.032, and the standards in Section 23.05.048.
- (2) Within 60 days of County verification that the project qualifies for Alternative Review, the NRCS or RCD shall provide written verification that the project can meet Alternative Review requirements, including compliance with appropriate Field Office Technical Guide (FOTG) management practices. An extension of this period may be approved upon applicant request and agreement by the Director and the NRCS/RCD. The NRCS/RCD's written determination shall be made and considered by the Director prior to the authorizing a proposed project to proceed under the Alternative Review Program.
- (3) Upon final implementation/installation of appropriate FOTG practices and standard engineering practices, the NRCS/RCD shall submit a project finalization report to the County.
- (4) Projects which are not approved for Alternative Review, including projects which do not receive a project finalization report, shall be subject to Section 23.05.056 and Chapter 23.10.
- (5) For projects involving roads or ponds, the Agricultural Commissioner's office shall make a written determination that the extent of the existing agricultural use or a proposed

agricultural use of the property justifies the need for the road or pond. The Agricultural Commissioner may consider such features as length, width, capacity, and extent of the proposed road or pond in determining whether it is justified. The Agricultural Commissioner's written determination shall be made and considered by the Director prior to the authorizing a proposed project to proceed under the Alternative Review Program.

- (6) Where an application for Alternative Review proposes a project that is not otherwise subject to land use permit requirements of Chapters 23.03 or 23.08 or other applicable sections of this Title, approval of an Alternative Review Form by the Director certifies that the proposed project will satisfy applicable provisions of this Title. In these circumstances approval of an Alternative Review Form functions as a Plot Plan (pursuant to Section 23.02.030), and thereby constitutes approval of a Coastal Development Permit. Where an Alternative Review project is appealable to the Coastal Commission pursuant to Section 23.01.043, Minor Use Permit approval is also required as set forth in Section 23.02.033.

b. Projects allowed under the alternative review program.

- (1) **Hillside Benches.** Hillside benches and other appropriate methods for planting orchards and vineyards on slopes over thirty percent.
- (2) **Rangeland Management Projects.** Rangeland management projects involving grading, or removal of more than one acre of vegetation, on lands with slopes in excess of 30 percent. Conducting these activities on lands that have been previously grazed may instead qualify for an exemption as set forth in Section 23.05.032.b(11)(ii).
- (3) **New agricultural roads.** New roads, or expansion to the length or width of existing roads, which provide access to farm fields, pastures, water supplies, outdoor equipment or supply storage areas, livestock grazing areas, fence lines, or an agricultural structure which does not require a county building permit (agricultural exempt structure). New roads shall be the minimum width necessary for the planned agricultural use (generally between 12 and 16 feet in width), consistent with the determination made under Subsection a(5). The road shall not supply access to a habitable structure. Ford crossings (i.e. "Arizona" crossings), as determined to be appropriate by the Agricultural Commissioner, may be included in the construction of new agricultural roads.
 - (i) **Future grading permit required.** A grading permit shall be required for the road if it will serve a structure that requires a construction permit. Further, the road shall be required to be improved to meet all then current standards. The permit shall include all of the work that was previously exempt or subject to alternative review.
 - (ii) **Qualifying criteria for alternative review.** In addition to the criteria in Section 23.05.032.a, roads shall meet all of the following:
 - (a) Must be located within an Agriculture or Rural Lands land use category. The roads must also be outside of an urban or village reserve line, or within

a Residential Rural land use category where the road is to serve an existing agricultural operation as determined by the Agricultural Commissioner's office.

- (b) Shall have properly designed and placed culverts, water bars or other drainage and erosion and sedimentation control features meeting the recommended practices and standards provided by NRCS or RCD. Effective erosion and sedimentation control measures shall be used on all cut and fill slopes in compliance with Sections 23.05.042 and 23.05.048.c to protect, restore and revegetate within 45 days after the completion of work or before October 15. This 45 day period may be extended where work is completed earlier in the year and an extension is necessary for rainfall to assist onsite revegetation. Vegetation buffer strips shall be maintained between the road and watercourses ~~blue line streams~~ (as applicable) ~~shown on the latest USGS 7-1/2 minute topographic quadrangle~~ to trap sediment before it reaches the stream.
 - (c) Have adequate cross-slope for proper drainage and erosion control. Outward sloping roads are encouraged unless infeasible or inappropriate.
 - (d) Does not divert drainage onto adjacent properties. Does not discharge or threaten to discharge silt on adjacent properties, roads, sensitive resource areas, or into watercourses ~~streams as shown on the latest USGS 7-1/2 minute topographic quadrangle~~.
 - (e) Constructed between April 15 and October 15; unless temporary erosion control is in place and the reseeding is assured to occur in the appropriate months for germination, as approved by a soil erosion specialist.
- (4) **Ponds, reservoirs, and dams.** Agricultural reservoirs constructed to regulate or store a supply of water and drainage basins designed to catch run-off not related to development requiring a County permit. A drainage basin designed to catch run-off relating to development requiring a County permit shall require the issuance of a grading permit in compliance with 23.05.028. Reservoirs, ponds, or basins, with a storage capacity of 15 acre-feet or more and a dam height of 25 feet or more; or with a storage capacity of 50 acre feet or more and a dam height of 6 feet or more are subject to the jurisdiction of the Division of Dam Safety of the California Department of Water Resources. Any pond, reservoir, or basin which catches and retains surface drainage or riparian underflow shall have applicable water rights entitlements from the California Department of Water Resources. Ponds, reservoirs, and dams are subject to the standards in Section 23.05.048.f.
- (5) **Streambank protection measures.** Streambank protection measures when using NRCS Practices.

- (6) **Conservation, restoration, and enhancement projects.** Soil, water, and/or wildlife conservation or enhancement projects which do not require permits from a state or federal resource agency, or for which the permitting state or federal agency does not review plans or conduct final inspections.
- (7) **Trail and recreation enhancements.** Trails for agricultural production support activities and recreation enhancements of property. If a land use permit is required under this ordinance to establish a recreational facility, no grading shall occur until the appropriate approvals have been secured.
- (8) **Waste management systems.** Waste management systems for agricultural production and processing uses.
- (9) **Imbalanced Grading.** Any agricultural grading identified in Section 23.05.032, Subsections b(4112), b(4314), and c which would require the importation or exportation involving over 2,000 cubic yards of fill material.
- (10) **Exempt uses.** At the applicant's option the Alternative Review Program may be used in lieu of exemption for grading projects in compliance with Section 23.05.032 – Subsections b(4112), b(4213), b(4314), and c.